

EXHIBIT A

5/20/2014 8:00:00 AM

Amalia Rodriguez-Mendoza
District Clerk
Travis County
D-1-GN-14-001466

CAUSE NO. D-1-GN-14-001466

ESTATE OF JANICE M. SMITH,
DECEASED,
Plaintiff

v.

TRANSAMERICA LIFE INSURANCE
COMPANY,
Defendant

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

98TH JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

The Estate of Janice M. Smith files this Original Petition, complaining of Transamerica Life Insurance Company, Defendant. The subject matter of this suit relates to long-term care insurance benefits payable for Alzheimer's care.

I.

PARTIES AND SERVICE

1. This suit is brought for the benefit of the Estate of Janice M. Smith, Deceased. Stephanie A. Smith prosecutes this suit in her representative capacity as the independent executor of the Estate of Janice M. Smith, Deceased. The estate is the subject of proceedings in the Probate Court Number One of Travis County, Texas.

2. Defendant, Transamerica Life Insurance Company is an insurance company licensed to do business in Texas. Defendant is sued individually and as successor to the original insurer, Life Investors Insurance Company of America. **Citation should issue and be served on the Defendant, Transamerica Life Insurance Company, through its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.**



II.

JURISDICTION AND VENUE

3. This court has jurisdiction over the parties because the Estate of Janice Smith, Deceased, is filed in Texas, and Transamerica Life Insurance Company is licensed to do business in Texas. A substantial part of the facts made the basis of suit occurred in Texas.

4. Travis County is proper venue because the Estate of Janice M. Smith is pending in Travis County, Texas, and a substantial part of the events or omissions made the basis of this action occurred in Travis County.

5. The subject matter in controversy is within the jurisdictional limits of this court. Pursuant to Texas Rule of Civil Procedure 47, Plaintiff seeks monetary relief in excess of \$200,000 but not more than \$1,000,000.00. Plaintiff also seeks further relief to which it is entitled.

III.

DISCOVERY CONTROL PLAN

6. Subject to the entry of a scheduling order, Plaintiff invokes the Discovery Control Plan set forth in Rule 190.3 (Level 2) of the Texas Rules of Civil Procedure.

IV.

BACKGROUND

7. Janice M. Smith suffered from Alzheimer's disease. Her condition necessitated medical and residential care over the course of many years. Her health declined, and she eventually moved to full time care at a licensed care facility. With aid



from her family and care providers, Janice M. Smith lived to the age of 89. She passed on October 12, 2012.

8. Janice M. Smith was insured under a long term care policy issued by Life Investors Insurance Company of America (“Life Investors”). Effective October 10, 2008, Life Investors merged into the Defendant, Transamerica Life Insurance Company (“Transamerica”). Transamerica continued to administer the initial policy, Long Term Policy 1450593340, bearing the Effective Date of May 1, 1993.

9. Policy 1450593340 promises payment of costs associated with long term care. Janice M. Smith initially received insurance benefits for assisted living expenses or “home and community care.” However, as Janice M. Smith necessitated more intensive care, Defendant declined to pay Confinement Benefits promised under the policy.

10. Plaintiff shows that Policy 1450593340 obligates Defendant to cover long term expenses associated with Alzheimer’s care. Janice M. Smith relied on promises attributable to the Defendant regarding coverage under the policy. Such promises and representations induced purchase of the policy; Defendant induced reliance throughout the life of the policy. At all times material, the policy was in full force and effect, and all conditions precedent to Defendant’s liability occurred.

V.

BREACH OF CONTRACT

11. Plaintiff shows that Defendant’s refusal to pay under the policy constitutes breach of contract. Plaintiff seeks contract benefits under the policy in excess of \$70,000.00.



VI.

BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

12. After claim was presented to Defendant, Transamerica's liability to pay was reasonably clear. Nevertheless, Defendant unreasonably refused to accept responsibility to pay. Plaintiff shows that Defendant failed to conduct a reasonable, proper investigation of the claim, failed to rely on true facts, and instead resorted to incomplete and biased reasons to disclaim responsibility to pay. Defendant breached its duty to deal fairly and in good faith, and the breach of duty was a proximate cause of injury to Janice M. Smith. Recovery of damages occasioned by the injury should flow to the benefit of the Estate of Janice M. Smith.

VII.

UNFAIR CLAIM SETTLEMENT PRACTICES

13. Having received notice of Plaintiff's claim, Defendant engaged in unfair settlement practices, as enumerated and declared unfair or deceptive in Chapter 542 of the Texas Insurance Code and Section 17.46(b) of the Texas Business and Commerce Code. Such practices include, but are not limited to:

- a) knowingly misrepresenting to a claimant pertinent facts or policy provisions relating to the coverage at issue;
- b) not attempting in good faith to effect a prompt, fair, and equitable settlement of a claim submitted in which liability has become reasonably clear;
- c) refusing to pay the claim without first conducting a reasonable investigation; and
- d) misrepresenting the insurance policy.



14. Defendant's conduct is a producing cause of damage to Janice M. Smith. Plaintiff shows that the acts and omission by Defendant were done knowingly and with actual awareness of the unfairness of the conduct described. Plaintiff therefore requests additional damages of up to three times the amount of actual damages, as authorized by Section 541.152(b) of the Texas Insurance Code.

VIII.

STATUTORY PENALTY

15. Defendant should also pay statutory penalties under Section 542.060 of the Texas Insurance Code. Defendant failed to meet its obligations under the policy, even though adequate time has elapsed for Defendant to investigate, and Defendant has the information necessary to pay the claim.

IX.

DAMAGES

16. As a result of Defendant's acts and omissions, Janice M. Smith sustained losses and injuries, and recovery of damages should flow to the benefit of decedent's estate. By way of this action, Plaintiff seeks recovery of damages, including, but not limited to, the following:

- a) Actual and consequential damages;
- b) Contract damages under the policy; and
- c) Statutory damages and penalties.

Additionally, Plaintiff is entitled to recover a reasonable sum for the necessary services of Plaintiff's attorney in the preparation of trial of this action, through final appeal.



WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendant Transamerica Life Insurance Company be cited to appear and answer, and that on final trial, Plaintiff have:

1. Judgment against Defendant for a sum within the jurisdictional limits of the Court;
2. Prejudgment interest as provided by law;
3. Interest on the amount of policy benefits, as a statutory penalty under Chapter 542.060 of the Texas Insurance Code;
4. Reasonable and necessary attorney's fees;
5. Postjudgment interest as provided by law;
6. Costs of suit; and
7. Such other and further relief to which Plaintiff is justly entitled.

Respectfully submitted,

By: /s/ Dean A. Schaffer

Dean A. Schaffer
Attorney at Law
Texas State Bar No. 17723500
1411 West Ave., Ste. 100
Austin, TX 78701
Phone: 512/474-7150
FAX: 512/474-5594

ATTORNEY FOR PLAINTIFF



CIVIL CASE INFORMATION SHEET

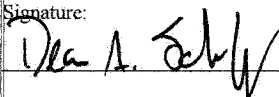
MAY ENTER CAUSE # / COURT # IF ALREADY ASSIGNED (E.G., FAMILY MOTION, AMENDED PETITION)

CAUSE NUMBER (FOR CLERK USE ONLY): D-1-GN-14-001466

COURT (FOR CLERK USE ONLY): 98TH

STYLED Estate of Janice M. Smith v. Transamerica Life Insurance Company

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:		Names of parties in case:	Person or entity completing sheet is:
Name:	Email:	Plaintiff(s)/Petitioner(s):	<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner
Dean A. Schaffer	dschaffer@1411west.com	Estate of Janice M. Smith	<input type="checkbox"/> Pro Se Plaintiff/Petitioner
Address:	Telephone:	Defendant(s)/Respondent(s):	<input type="checkbox"/> Title IV-D Agency
1411 West Avenue, Suite 100	512.474.7150	Transamerica Life Insurance Co.	<input type="checkbox"/> Other:
City/State/Zip:	Fax:	Additional Parties in Child Support Case:	Custodial Parent:
Austin, Texas 78701	512.474.5594		Non-Custodial Parent:
Signature:	State Bar No:	Presumed Father:	
	17723500		
		[Attach additional page as necessary to list all parties]	

2. Indicate case type, or identify the most important issue in the case (select only 1):OPTION A: CK CASE TYPE (EXCEPT OTHER) FOR CLERK TO SELECT SUIT TYPE; SEE SEC. 3 NOTE BELOW **Civil****Family Law**

Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input checked="" type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:
Employment	Other Civil			
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Sedition/Insurrection <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:			

Tax	Probate & Mental Health
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:

3. Indicate procedure or remedy, if any, to be used to resolve the case (select only 1):	Prejudgment Remedy
<input type="checkbox"/> Appeal from <input type="checkbox"/> Arbitration— <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Turnover

OPTION C: SECTION 3 PROCEDURES/REMEDIES IN BOLD MAY BE USED AS CASE OR SUIT TYPES. YOU MAY SPECIFY THAT ONE OF THESE PROCEDURES/REMEDIES BE USED AS A SUIT TYPE BY CHECKING IT AND LEAVING THE CASE TYPE IN SECTION 2 BLANK. SELECTING A CASE TYPE IN SECTION 2 OVERRIDES ANY SELECTION IN SECTION 3.

APPROVED**By DavisK2 at 1:29 pm, Jun 09, 2014**

C I T A T I O N
T H E S T A T E O F T E X A S

CAUSE NO. D-1-GN-14-001466

ESTATE OF JANICE M SMITH, DECEASED; STEPHANIE A SMITH, AS INDEPENDENT EXECUTOR
OF THE ESTATE OF JANICE M SMITH

, Plaintiff

vs.

TRANSAMERICA LIFE INSURANCE COMPANY

, Defendant

TO: TRANSAMERICA LIFE INSURANCE COMPANY
BY SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM
350 NORTH ST PAUL ST
DALLAS, TEXAS 75201

CERTIFIED MAIL # 7012 3460 0000 8874 7432

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on MAY 20, 2014 in the 98TH JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, May 22, 2014.

REQUESTED BY:
DEAN A SCHAFER
1411 WEST AVE STE 100
AUSTIN, TX 78701-1537
BUSINESS PHONE: (512) 474-7150 FAX: (512) 474-5594



Amalia Rodriguez-Mendoza
AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, TX 78701

PREPARED BY: GLASSON SHAUN

-- -- -- -- -- R E T U R N -- -- -- -- --

Came to hand on the _____ day of _____, _____ at _____ o'clock ____ M., and
executed at _____ within the County of _____
_____ on the _____ day of _____, _____, at _____ o'clock ____ M.,
by delivering to the within named _____, each
in person, a true copy of this citation together with the PLAINTIFF'S ORIGINAL PETITION and LAWYER
REFERRAL accompanying pleading, having first attached such copy of such citation to such copy of
pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ 75.00

Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the

By: _____

_____ day of _____, _____.

SHAUN GLASSON
Printed Name of Server

Notary Public, THE STATE OF TEXAS

County, Texas

D-1-GN-14-001466

DISTRICT CLERK CERTIFIED MAIL

P01 - 000020288

☒ Original

☐ Service Copy

7012 3460 0000 8874 7432

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To

TRANSAMERICA LIFE INSURANCE COMPANY
 BY SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM
 350 NORTH ST PAUL ST
 DALLAS, TEXAS 75201

PS Form 3800, August 2006

See Reverse for Instructions

D-1-GN-14-001466 - ORIGINAL PETITION

JG

APPROVED

By DavisK2 at 1:29 pm, Jun 09, 2014

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk,
 Travis County, Texas, do hereby certify that this is
 A true and correct copy as same appears of record
 in my office. Witness my hand and seal of office
 On _____



Amalia Rodriguez-Mendoza
 AMALIA RODRIGUEZ-MENDOZA

DISTRICT CLERK

By Deputy: *FD*

Case:d-1-gn-14-001466 with (2) documents

Filed Date	Category	Description	Additional Info
5/20/2014	PET-PL ...	ORIGINAL PETITION/WAPPLICATION	PLAINTIFF'S ORIGINAL PETITION
5/22/2014	ISSUANC...	ISS.CITATION	Form Number P01-20288 Issued by GLASSON SHAUN (4701) ISS.CITATION

EXHIBIT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ESTATE OF JANICE M. SMITH,
DECEASED,

Plaintiffs,

vs.

TRANSAMERICA LIFE INSURANCE
COMPANY,

Defendants.

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CIVIL ACTION NO. _____

AFFIDAVIT OF DAN REESE

TARRANT COUNTY)

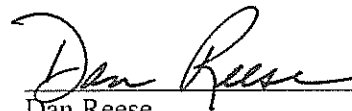
STATE OF TEXAS)

BEFORE ME, the undersigned authority, on this day personally appeared Dan Reese, who was duly sworn and stated under oath as follows:

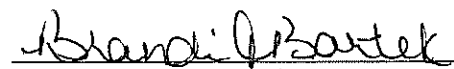
1. "My name is Dan Reese. I am competent in all respects to provide this affidavit. "I am a Vice President and General Counsel for the Long Term Care Business Unit of Transamerica Life Insurance Company ("Transamerica")." In that capacity, I have personal knowledge of the facts set forth in this affidavit, each of which is true and correct. I am providing this affidavit in conjunction with Transamerica's Notice of Removal.

2. Transamerica is an Iowa corporation with its principal place of business in Cedar Rapids, Iowa. For purposes of diversity of citizenship, Transamerica is considered a citizen of the state of Iowa."

FURTHER AFFIANT SAYETH NAUGHT.


Dan Reese

Subscribed and sworn to before me this 4th day of June, 2014.


Notary Public, State of Texas
My Commission Expires: 4-15-2016

